



**Maryland
Transportation
Authority**

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September 11, 2008

TO ALL PURCHASERS OF CONTRACT DOCUMENTS:

RE: **Contract No. MA 2161-000-002**
On-Call Structural Repairs and Miscellaneous Modifications

ADDENDUM NO. 1

Gentlemen:

A: The Bid Opening Date for the above referenced contract is still 12:00 noon on September 19, 2008.

B: The following changes have been made to the **Invitation for Bids**:

1. Enclosed are the Pre-Bid Meeting Minutes, responses to questions and MBE Handout information for this contract.
2. Delete pages 051, 058, 061, 105, 138 and 142 and add the pages numbered the same dated September 11, 2008, Addendum No. 1.

C: PLANS

The following Contract As-Built Drawings are included for "Reference Purposes Only".

- 1 - P.T. 120 Sheets 2, 82-84, 87, and 125 of 133
- 2 - HT 731-000-002 Sheets 3 & 4 of 5
- 3 - Standard Drawing No. 18

Very truly yours,

Benjamin Mondell
Chief, Engineering Procurement

BM/mdj

THIS ADDENDUM MUST BE ATTACHED TO THE OUTSIDE COVER OF THE PROPOSAL FORM. FAILURE TO DO SO MAY RESULT IN REJECTION OF YOUR BID.

THE ATTACHED RECEIPT MUST BE RETURNED TO THIS OFFICE. FAILURE TO RETURN THE RECEIPT MAY RESULT IN REJECTION OF YOUR BID.

Pre-bid Meeting

Contract No. MA 2161-000-002
On-call Structural Repairs and Miscellaneous Modifications

Anne Arundel, Baltimore, Cecil, Charles, Harford, Howard, and Queen Anne's Counties, and
Baltimore City

September 3rd, 2008 (9:00 AM – 10:00 AM)

The following were in attendance:

Nafiz Alqasem	MdTA Engineering
Abey Tamrat	MdTA Engineering
Koudjo Amouzou	MdTA Engineering
Bob McKenzie	MdTA Engineering
Glenn Icenrode	MdTA Construction
Ben Mondell	MdTA Procurement
Linda McGill	MdTA Procurement
Steve Dasgupta	Structural Preservation Systems, LLC
Bruce Loughton	Blastech Enterprises
Sean MacNeal	Corman Construction, Inc.
Mark Miller	The Marksmen Company
Michael Oshtuhus	Brawner Builders
Jerry Sheeb	PDI-Sheetz
Andy Vickers	Cianbro Corporation
Jim Young	The Six M Company, Inc.

Ms. McGill opened the meeting with the following notes:

The scope of work includes providing labor, equipment, materials, etc. necessary to perform miscellaneous structural repairs and other repairs, modifications and enhancements on I-895 over the Boston Street Bridge and the Authority's facilities as directed by the Engineer and as shown on the contract plans and specifications.

The Contract Time is 730 Calendar Days with no liquidated damages.

1. The bid due date is **September 19, 2008 by 12 Noon**. Late bids will not be accepted.
2. Bid packages must be placed in the bid box located on the first floor of the Engineering Building at the Francis Scott Key Bridge, 300 Authority Drive and should consist of one complete bid book.
3. The Authority does not encourage overnight delivery service. However, if a

bidder chooses to send a package via overnight delivery, the bid should be delivered at least a day in advance. It will be the responsibility of the bidder to make sure that his/her bid package is placed in the bid box. The outside envelope of the mailed package must clearly identify the Contract Number and mention that it is a bid package.

4. The minutes from this meeting will be included in addendum #1 and distributed to all purchasers of the bid documents.
5. It is strongly recommended that potential bidders review page I, the Notice to Bidders, and pages III-V, Important Information Regarding MBE Utilization and Bidding Requirements of this invitation for bids prior to submitting their bids on this project.
6. Following this meeting, all questions should be submitted in writing and addressed to the Project Manager Mr. Abey Tamrat via fax 410-537-7801. The Authority will accept written questions until 12:00 Noon, **seven days prior** to the bid opening. Answers to questions will be distributed to all purchasers of bid documents.
7. There is an MBE goal for this project. The overall goal is 25% with no subgoals.

If bidders require assistance with the MBE directory, they should contact Meshelle Howard at 410-537-1051.

After a round of introductions, Mr. Tamrat opened the floor to questions about the project:

Question: Is the Engineers Office to have a single location?

Answer: Yes. The location of the Engineers Office will be determined by the Authority at the preconstruction meeting.

Question: The schedule of prices includes \$925,000.00 in allowance items (Page 145). Is this amount subject to the MBE percentage? If so, how can we submit an MBE package without knowing the exact amount of work to be done under this contract?

Answer: This Contract has an overall MBE goal of 25. The Schedule of Prices include specific items that can potentially be assigned to MBE firms. This Contract is also a structural repair contract concentrating on concrete and steel repairs that lend itself to MBE assignments. We believe contractors should be able to meet the MBE goal with the items specified in the Schedule of Prices.

Question: This contract calls for several different kinds of deck repairs. Is the total area of these deck repairs known?

Answer: The total quantity for each repair is stated in the Schedule of Prices. Location of deck repairs will be determined by the Engineer during construction.

Question: How was the MBE goal determined without a definite idea of how much work is to be done?

Answer: We performed an estimate which indicates that the MBE goal can be achieved under this contract. The deck repair items in the Schedule of Prices were included to give contractors specific items that can be assigned to MBE firms.

Question: Do the deck repair items include a foreman?

Answer: The deck repair items are stand-alone items. If the contractor thinks foreman service is needed for a deck repair task, he should include it in his bid.

Question: Is maintenance of traffic included in the repair items?

Answer: The specification states that Maintenance of Traffic will be paid separately.

Question: There are big variations in wage rates for different kinds of skilled labor- for instance, between concrete work and steel work- but the schedule of prices has only one bid item for skilled labor (Item No. 4001, Page 142). Is this intentional?

Answer: Yes. There is only one item for Skilled Labor in this Contract. For the purpose of this Contract, all workers are considered Skilled Labor with the exception of Forman, Boat Captain, Deck Hand, and Welder.

Question: The wage rates on Pages 105 & 106 do not include wages for a boat captain or deck hand. Can you provide them?

Answer: We will request for this information from the Department of Labor, Licensing and Regulation.

Final Response: The Wage Rate information has been updated. Please see the revised Wage Rate table on Page 105 for details.

Question: Will the boat captain be required to hold any licenses?

Answer: We will look into this matter and get back to you.

Final Response: The boat captain is not required to have a specialized license for the purpose of this contract. However, the boat captain shall meet all local and state qualifications.

Question: Does the boat referred to in bid item no. 4003 (Page 142) meet the requirements of the Maryland standard? Sixteen foot long boat sounds too small.

Answer: We will look into this matter and get back to you.

Final Answer: The size of the boat has been revised. Please see Addendum No. 1 for applicable sections.

Question: How will the boat be used?

Answer: The boat may be used by the Engineer or/and as a safety boat during construction over water. If a specialized boat is needed for a particular work in this Contract, such as barges, it will be paid for as separate item.

Question: The payment unit for the flagging operation (bid item no. 1001, p. 138) is "per unit day." Without knowing the exact scope of the project, it's impossible to determine the number of days needed. Changing the payment unit to "per person per day" or "hourly" would make the estimation process easier. Can this be done?

Answer: The payment unit for this item has been revised. See Addendum No. 1 for details.

Question: MOT items have been included for the fascia beam replacement on the I-895 over Boston Street bridge (Bid Item Nos. 1009-1018, Pages 139-40). Do they apply to that structure only?

Answer: These items will be used for the I-895/Boston street repair as well as other locations as needed in the project.

Question: What is the spacing of the grid deck bearing bars?

Answer: The contractor shall design the grid deck with appropriate bearing bars spacing in accordance with the design loading and requirements provided in the contract documents. Please see the General Notes on Sheet 2 of 12 of the contract plans for steel grid deck design requirements.

Question: Are there as-built drawings showing the details for the grid deck of the I-895 over Boston Street bridge?

Answer: Yes. A record search is in progress and all available as-built plans showing applicable details will be included in the Addendum No. 1 package.

Final Response: As-built drawings, including a standard grid deck details, are attached for reference purposes only. The contractor shall meet all the contract requirements as stated in the proposal book and plan sheets. Please see the General Notes on Sheet 2 of 12 of the contract plans for steel grid deck requirements.

Question: How can we create a CPM schedule when the exact scope of this contract is not known?

Answer: A CPM schedule is included in the Schedule of Prices. This schedule will only be used for the I-895 over Boston Street Repairs.

Question: The Joseph B. Fay Company is currently working on the I-895 over Boston Street bridge. Will Joseph B. Fay Company be notified if the contractor needs to work on that bridge at the same time?

Answer: Yes. Coordination with the Joseph B. Fay Company will be required. However, the repair of the I-895 over Boston Street bridge is a priority, to be performed before any other work in this contract.

Question: Why are there two items for hydraulic lift platforms (Page 144)?

Answer: The purpose of these two items is to make it cost effective for the Authority to rent the platforms. In other words, based on the task duration for a given task, the contractor will rent the platform on a daily basis (Bid Item No. 4014) or on a weekly basis (Bid Item No. 4015) whichever is lower.

Question: What determines if an equipment rental shall be paid at a daily or weekly rate? For instance, if equipment is rented for three days, would it be paid for per day or per week?

Answer: Subsection 400.02.04 of the Special Provisions on Pages 63 & 64 details how rental payments shall be determined with examples.

Question: Is the nature of this work continuous?

Answer: Yes. The Authority will determine the types of repairs and provide a list of work to the contractor based on priority.

Question: Is it known where most of the deck repair items will be used? Is the square footage of deck repairs per bridge known? The areas need to be substantial enough to be worth mobilizing and demobilizing for each bridge.

Answer: Specific locations of bridge deck repairs have not been determined at this time. However, all Authority-owned bridges, including the Chesapeake Bay bridge and the Tydings bridge, are eligible for these repairs. We feel certain that there will be enough of this kind of work to justify mobilization.

Question: Can you provide a copy of sign-in sheet?

Answer: Yes. This was provided at the meeting.

Question: Can we send questions via e-mail?

Answer: All questions should be submitted in writing and addressed to the Project Manager Mr. Abey Tamrat via fax 410-537-7801. The Authority will accept written questions until 12:00 Noon, **seven days prior** to the bid opening. Answers to questions will be distributed to all purchasers of bid documents.

As there were no further questions, the meeting was adjourned.


A handwritten signature in black ink, consisting of stylized cursive letters, is written over a horizontal line.

Approved



Maryland
Transportation
Authority

SPECIAL PROVISIONS

CONTRACT NO. MA 2161-000-002

Page 9 of 9

("TMA") with support structure designed for attaching the system to the work vehicle, and approved arrow panel (arrow mode for multilane roadways and caution mode on two-lane, two-way roadways.) The work vehicle size and method of attachment shall be as specified in the TMA manufacturer's specifications as tested under NCHRP 350 Test Level 3.

104.01.04 MEASUREMENT AND PAYMENT.

INSERT: The following:

Measurement and payment will be made at the Contract unit days item for Single Lane Closure, Double Lanes Closure, Shoulder Lane Closure, Entrance Ramp Treatment, and Exit Ramp Treatment items. Flagging Operation will be paid for at the Contract unit price per hour. The payment will be full compensation for all material, labor, traffic manager, equipment, tools, and incidentals necessary to complete the work. The cost shall include all required equipment and setups shown on the maintenance of traffic standards as well as removal of all traffic control setups.

See Subsection 400.08.04 for Maintenance of Traffic – Measurement & Payment for "Exterior Beam Replacement on the Overpass at Boston Street" work.

Addendum No. 1
September 11, 2008

**CATEGORY 400
STRUCTURES**

SECTION 400.01 LABOR FOR STRUCTURAL REPAIRS

400.01.01 DESCRIPTION. This work shall consist of providing labor in each of the following labor classification items. These rates shall apply to labor supplied by the prime Contractor as well as any of its subcontractors.

- 1) Skilled Labor Items – These items include all workers that are not a Bridge Repair Foreman, Welder, Boat Captain, Deck Hand, and Field Superintendent.
- 2) Bridge Repair Foreman – This is for a Bridge Repair Foreman and shall include a light duty truck to be used for transporting workers, materials, and equipment. This worker shall have a minimum of five (5) years experience as a bridge repair and structural repair foreman. The light duty (up to and including 1 ton rating) truck included in this item shall be outfitted with a hitch capable of towing 5000 lb. The light duty truck included in this item includes all trucks having a bed length of up to and including 10 ft. regardless of the cab's configuration (conventional or crew) and the bed's configuration (i.e. standard pick up bed, flat bed, utility truck bed, stake body bed, etc.).
- 3) Welder – This is for a Maryland State Certified Welder and shall include all equipment (welding machine, leads, hot box, welding shields, grinders, etc.) necessary to perform the work. This item shall also include all transportation costs for the welder and all equipment. This item shall be used regardless of the location where the actual welding occurs (in shop, in field on the ground, in field up on the bridge structure, etc.). Welder work shall include field measuring cutting, fitting, fabrication, torch cutting, and air arcing, and welding.
- 4) Boat Captain – This is for a Boat Captain and shall include a 21 foot minimum size boat.
- 5) Deck Hand – This item is for a Deck Hand.
- 6) Field Superintendent – When more than one construction crew is working, the Contractor shall provide a full time Field Superintendent who will act as the Contractor's liaison with the Engineer. The Field Superintendent shall be experienced in bridge construction work and is subject to the approval of the Engineer.

SMALL TOOLS. In conformance with TC-7.03, small tools are considered to be any equipment with a new purchase price of under One Thousand Dollars (\$1,000.00). In addition, each of the following pieces of equipment will be considered to be small tool, regardless of the new purchase price:



SPECIAL PROVISIONS INSERT

CONTRACT NO. MA 2161-000-002

Page 4 of 4

paid at the welder rate. On days when welder work (including applicable travel time) is performed over four hours, the welder will be paid for actual hours worked up to eight hours at the Contract unit price per hour for Welder, regardless if welding work or skilled labor work is performed beyond the hours of welding work.

400.01.04.04 Boat Captain including 21 foot minimum size boat will be measured and paid for at the Contract unit price per hour. The payment will be full compensation for the Boat Captain and the use, maintenance, and operating costs of a boat to be used, and materials, and equipment.

400.01.04.05 Deck Hand will be measured and paid for at the Contract unit price per hour. Payment will be full compensation for all equipment and transportation of equipment necessary to perform the work.

400.01.04.06 Field Superintendent will not be measured, but cost will be incidental to pertinent labor items specified in this Contract.

400.01.04.07 An allowance of \$25,000.00 has been established for lodging and meals in the Schedule of Prices. There is no guarantee that any or all of this item will be used during the term of the Contract.

Addendum No. 1
September 11, 2008

STATE OF MARYLAND
DEPARTMENT OF LABOR, LICENSING AND REGULATION
DIVISION OF LABOR AND INDUSTRY
PREVAILING WAGE SECTION
1100 N. Eutaw Street, Room 607
Baltimore, Maryland 21201
(410) 767-2342

The wage rates to be paid laborers and mechanics on the contract described below is announced by order of the Commissioner of Labor and Industry.

It is mandatory upon the successful bidder and any subcontractor under him, to pay not less than the specific rates to all workers employed by them in execution of this contract. Reference: Annotated Code of Maryland State Finance and Procurement, Section 17-201 thru 17-226 inclusive.

These rates were taken from the locality determination dated August 8, 2007 for Harford County, issued pursuant to the Commissioner's authority under State Finance and Procurement Article Section 17-209, Annotated Code of Maryland.

Keith A. Duerling, P.E. Director of Engineering
(Name and Title of Requesting Officer)

January 3, 2008
(Date of Issue)

Maryland Transportation Authority, 300 Authority Drive, Baltimore Maryland 21222
(Department, Agency or Bureau) (Address)

Various Locations: On-Call Structural Repairs and Miscellaneous Modifications @MDTA's Facilities
(Location and Description of work)

Project No.: MA-2161-000-002

CLASSIFICATION	BASIC HOURLY RATE	FRINGE BENEFIT PAYMENTS
BOAT CAPTAIN	\$23.88	\$6.87
CARPENTER	\$17.85	\$6.75
CEMENT MASON	\$18.41	
ELECTRICIAN	\$28.75	\$12.95
IRONWORKER:		
STRUCTURAL	\$25.55	\$13.44
REINFORCING	\$25.55	\$13.44
LABORER:		
COMMON OR UNSKILLED	\$13.16	
CONCRETE SURFACER	\$19.13	
ASPHALT RAKER	\$17.50	\$5.58
PAINTER:	\$22.06	\$7.36
STEEL-BRIDGE	\$26.37	\$7.36
TRUCK DRIVER:		
DUMP TRUCK	\$15.59	
TACK	\$16.50	\$5.50

SCHEDULE OF PRICES

NOTE: This proposal shall be filled in by the bidder, with the prices written in words and numerals. The extension amounts of unit costs shall also be filled in. For complete information concerning these items, see Specifications, Special Provisions and Contract Form.

ITEM NOS.	APPROXIMATE QUANTITIES	DESCRIPTION OF ITEM AND PRICE BID (IN WRITTEN WORDS)	UNIT PRICE		AMOUNTS	
			DOLLARS	CTS.	DOLLARS	CTS.
1001	400	HOURS OF FLAGGING OPERATION AT _____ PER HOUR				
1002	400	UNIT DAYS OF SINGLE LANE CLOSURE AT _____ PER UNIT DAY				
1003	300	UNIT DAYS OF DOUBLE LANES CLOSURE AT _____ PER UNIT DAY				
1004	250	UNIT DAYS OF SHOULDER LANE CLOSURE AT _____ PER UNIT DAY				
1005	150	UNIT DAYS OF ENTRANCE RAMP TREATMENT AT _____ PER UNIT DAY				

CONTRACT NO. MA-2161-000-002

Addendum No. 1, September 11, 2008

SCHEDULE OF PRICES

NOTE: This proposal shall be filled in by the bidder, with the prices written in words and numerals. The extension amounts of unit costs shall also be filled in. For complete information concerning these items, see Specifications, Special Provisions and Contract Form.

ITEM NOS.	APPROXIMATE QUANTITIES	DESCRIPTION OF ITEM AND PRICE BID (IN WRITTEN WORDS)	UNIT PRICE		AMOUNTS	
			DOLLARS	CTS.	DOLLARS	CTS.
4001	16,000	HOURS OF SKILLED LABOR AT _____ PER HOUR				
4002	4,000	HOURS OF BRIDGE REPAIR FOREMAN INCLUDING HIS/HER LIGHT DUTY TRUCK AT _____ PER HOUR				
4003	575	HOURS OF BOAT CAPTAIN INCLUDING 21 FOOT MINIMUM SIZE BOAT AT _____ PER HOUR				
4004	575	HOURS OF DECK HAND AT _____ PER HOUR				
4005	2,000	HOURS OF WELDER AT _____ PER HOUR				

CONTRACT NO. MA-2161-000-002

Addendum No. 1, September 11, 2008

CONTRACT ADMINISTRATION REQUIREMENTS

CONTRACT ADMINISTRATION REQUIREMENTS

Contractor shall:

1. Submit monthly to the Department a report listing any unpaid invoices, over 30 days old, received from any certified MBE subcontractor, the amount of each invoice and the reason payment has not been made.
2. Include in its agreements with its certified MBE subcontractors a requirement that those subcontractors submit monthly to the Department a report that identifies the prime contract and lists all payments received from Contractor in the preceding 30 days, as well as any outstanding invoices, and the amount of those invoices.
3. Maintain such records as are necessary to confirm compliance with its MBE participation obligations. These records must indicate the identity of certified minority and non-minority subcontractors employed on the contract, the type of work performed by each, and the actual dollar value of work performed. Subcontract agreements documenting the work performed by all MBE participants must be retained by the Contractor and furnished to the Procurement Officer on request.
4. Consent to provide such documentation as reasonably requested and to provide right-of-entry at reasonable times for purposes of the State's representatives verifying compliance with the MBE participation obligations. Contractor must retain all records concerning MBE participation and make them available for State inspection for three years after final completion of the contract.
5. At the option of the procurement agency, upon completion of the contract and before final payment and/or release of retainage, submit a final report in affidavit form and under penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

ATTACHMENTS

- A. Certified MBE Utilization and Fair Solicitation Affidavit (must be submitted with bid or offer)
- B. MBE Participation Schedule (must be submitted with bid or offer)
- C. Outreach Efforts Compliance Statement (must be submitted within 10 working days of notification of apparent award or actual award, whichever is earlier)
- D. Subcontractor Project Participation Statement (must be submitted within 10 working days of notification of apparent award or actual award, whichever is earlier)

RECORD RETENTION

Title 21 STATE PROCUREMENT REGULATIONS

Subtitle 06 CONTRACT FORMATION AND AWARD

Chapter 05 Plant Inspection, Audit and Retention of Records

**Authority: State Finance and Procurement Article, §§12-101, 15-108, and 15-109,
Annotated Code of Maryland**

.01 Right to Inspect.

Designees of the procurement agency, the Department of Legislative Services, or any other State unit authorized by law, may inspect at reasonable times the plant, place of business, or jobsite of any bidder or offeror, contractor, prospective subcontractor or assignee, or subcontractor or assignee.

.02 Audits.

A. Audit of Cost or Pricing Data. Designees of the procurement agency, the Department of Legislative Services, or any other State unit authorized by law may audit during the record retention period the books and records of any person who has submitted cost or pricing data to the extent that the books and records relate to the cost or pricing data.

B. Contract Audit. Designees of the procurement agency, the Department of Legislative Services, or any other State unit authorized by law shall be entitled to audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that the books and records relate to the performance of the contract or subcontract, or if the agency has reason to believe, from an audit of a cost type contract, that costs have been inappropriately assigned to a cost type contract from a fixed price contract.

.03 Record Retention.

The contractor or subcontractor shall maintain books and records that relate to the cost or pricing data for 3 years from the date of final payment under the contract, unless a longer period is otherwise specified in the contract.

**PROMPT PAYMENT
TO
SUBCONTRACTORS**

A. MARYLAND DEPARTMENT OF TRANSPORTATION POLICY
STATEMENT
PROMPT PAYMENT OF SUBCONTRACTORS

DISADVANTAGED/MINORITY BUSINESS ENTERPRISES

This policy is in accordance with Maryland State Law, codified at Md. Code Ann., State Finance and Procurement Article, §15-226, and 49 CFR, Part 26, 26.29(b)1-3.

It is the policy of the State that a contractor shall promptly pay a subcontractor any undisputed amount that a subcontractor is entitled to under a State procurement contract for construction. This payment shall be made within ten (10) days of receiving a progress payment or final payment from the State. "Undisputed amount" includes the retainage on a contract.

If a contractor withholds payment, the contractor shall:

1. Notify the subcontractor, in writing within the same ten (10) day time period, stating the reasons for payment being withheld,
2. Provide a copy of the notice to the procurement officer.

If a subcontractor does not receive payment within the required time period, the subcontractor may give written notice of non-payment to the procurement officer. The notice shall include:

1. The name of the contractor, the project under which the dispute exists and the amount in dispute,
2. Provide an itemized description on which the amount is based and
3. If known, provide an explanation for any payment dispute.

Within two (2) business days of receipt of written notice from a subcontractor, a MDOT Agency Representative shall verbally contact the contractor to determine if the amount is undisputed.

If the MOOT Agency Representative determines that all or some of the amount is undisputed, the representative shall instruct the contractor to pay the subcontractor the undisputed amount within three (3) business days. The MDOT Agency Representative shall verbally inform the subcontractor the results of discussions with the contractor. If the payment is not made, the subcontractor may report the non-payment to the procurement officer. As a result, the MDOT Agency Representative shall schedule a meeting of the agency project manager, the subcontractor and the contractor, as follows:

1. The time and location shall be selected by the agency representative,
2. The meeting shall be no later than ten (10) days after receiving notice from the subcontractor,
3. The meeting purpose is to establish the reasons for non-payment,
4. The agency representative shall require the parties to provide information necessary to evaluate the dispute,
5. If the agency representative determines the contractor is delinquent, further progress payments to the contractor may be withheld until the subcontractor is paid.

If the payment to the subcontractor is not made within seven (7) days after the agency representative determines that the contractor is delinquent, the agency representative shall schedule a second meeting on the dispute as follows:

1. The time and location shall be selected by the agency representative,
2. The meeting shall be no later than five (5) days after the close of the seven (7) day period.

After this second meeting, if the agency representative determines the contractor continues to be delinquent in subcontractor payments, he/she:

1. Shall order further payments to the contractor not be processed until payment is made to and verified with the subcontractor,
2. May order work under the contract be suspended based on the contractor's failure to meet contractual obligations under the contract,

3. May require the contractor to pay a penalty to the subcontractor, not to exceed \$ 100 per day, from the date that the payment was required, not to include any period that the agency representative determines that the subcontractor was not diligent in reporting non-payment to the procurement officer. The contractor or subcontractor may appeal the decision after the second meeting, noted above to the procurement officer. The contractor shall comply with the procurement officer's decision.

An act, failure to act or decision of the procurement officer or agency representative may not:

1. Affect the rights of the contracting parties under other provision of law, be used as evidence on the merits of a dispute between the agency and the contractor or the contractor and the subcontractor in any other proceeding or
2. Result in liability against or prejudice the rights of the agencies of the Maryland Department of Transportation.

A decision of a procurement officer or an agency representative designated by the procurement officer under this law is not subject to judicial review or the provision for bid protests and contract claims before the Board of Contract Appeals. This law shall be construed only prospectively and may not be applied or interpreted to have any effect on or application to any State procurement contract awarded before the effective date of this law, October 1, 1999.

**MINORITY
BUSINESS
ENTERPRISE
PROGRAM
HIGHLIGHTS**

Maryland Transportation Authority

Minority Business Enterprise Program Highlights

For purposes of MBE contract goal attainment and MBE Contract Compliance, the following information highlights the Maryland Department of Transportation (MDOT) Program Requirements:

1. Any participating MBE must be certified by MDOT to perform the item(s) of work /service selected for contract goal attainment.
2. Any participating MBE must serve a commercially useful function and may not act like a broker, unless it is certified as a broker (insurance or real estate). A firm is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carries out its responsibilities by actually performing, managing and supervising the work involved and /or negotiates the cost of, arranges and accepts delivery of and pays for the materials or supplies required for the work of its contract. If, at any time before execution of the contract, the contractor determines that the designated MBE subcontractor has or will become unavailable, it immediately shall notify the Administration.
3. Any change in the approved MBE Plan must be approved in advance by the Administration and shall indicate the contractor's efforts to substitute another certified MBE subcontractor to perform the work.

4. Contract Goal Credits for Materials and Supplies.

- a. A bidder may count toward its MBE goal expenditures for materials and supplies obtained from certified business suppliers, provided that the certified businesses assume the actual and contractual responsibility for the provision of the materials and supplies. The bidder may count its entire expenditure to a certified business supplier that manufactures or produces goods from raw material or that substantially alters goods before resale. The bidder may count 60 percent of the expenditures to certified suppliers who are not manufacturers towards its MBE goals. The MBE credited supplies may not exceed 60 percent of the credit given toward meeting the contract goal.
- b. Double Payee (Joint) checks to MBEs and suppliers for materials used by an MBE sub-contractor for its contracted work are allowable providing such a payment arrangement is offered to all subcontractor relationships and not restricted to just MBEs, and the MBE participates in scheduling the delivery of the materials and is fully responsible for ensuring that the materials meet specifications. However, when the contractor makes such payments, it is recommended that the payments be made by jointly endorsable checks signed by the contractor and MBE.
- c. For MBE firms that are not MBE regular dealers or manufacturers, a contractor may only count toward its MBE goal the fees charged for delivery of materials and supplies required on the job site (but not the cost of the materials and supplies themselves) when the trucking enterprise or delivery

service is not also the manufacturer of or regular dealer in the materials and supplies, provided that the fee is determined by the administration to be reasonable and not excessive as compared with fees customarily allowed for similar services.

5. Third Tier Subcontracting. Third Tier Contracting is not the usual way for a prime contractor to achieve a MBE goal. However, there may be rare occasions when third tier contracting would be acceptable. Two conditions must be met before approval of a third tier contracting arrangement, which may be entered into to meet a MBE goal:

- a. The Authority must be satisfied that there is no way except by third tier contracting that a DBE goal can be achieved;
- b. The prime contractor must request of the Authority, in writing, prior to the awarding of a contract, that approval be granted for each third tier contract arrangement. The request must contain the specifics as to why a third tier contracting arrangement is being requested to meet the MBE goal.

6. Waivers:

The Administration will strictly adhere to the requirement for documentation of any waiver requests as provided in COMAR. Accordingly, if, for any reason, a contractor is unable to achieve the contract goal or sub-goal MBE participation, it may request, in writing, an exception (waiver) to the goal with justification to include the following:

- a. A detailed statement of the efforts made to select portions of the work proposed to be performed by certified MBE (s);

- b. A detailed statement of the efforts made to contract and negotiate with certified MBEs including:
- (i) The names, addresses, dates and telephone numbers of MBEs contacted; and
 - (ii) A description of the information provided to MBEs regarding the plans, specifications and anticipated time schedule for portions of the work to be performed;
 - (iii) As to each certified MBE that placed a subcontract quotation or offer that your company considers not to be acceptable, a detailed statement of the reasons for this conclusion; and
 - (iv) A list of certified MBEs found to be unavailable. This list should be accompanied by a MBE Unavailability Certification (Form D-EEO-005) signed by the MBE, or a detailed statement from the contractor concerning the MBE's refusal to give the certification.

A waiver of a contract goal may be granted only upon a reasonable demonstration by the bidder or offeror that certified MBE participation was unable to be obtained or was unable to be obtained at a reasonable price and if the Administration determines that a waiver serves the public interest.

7. MBE Contract Compliance MonitoringMBE contract compliance monitoring commences upon official award of the contract has been made and continues throughout the life of the contract. An assigned contract compliance officer will advise the contractor and all approved participating MBE subcontractors, in writing, of compliance requirements, monitoring activities and will request necessary records

to establish MBE contractor compliance. If a contractor or any participating MBE subcontractor is found to be in non-compliance with the terms of MDOT's MBE Program or with the State's MBE Law, and fails or refuses to take the corrective action required, administrative sanctions may be imposed in order to promote the purpose of MDOT's MBE Program. These may be, suspension of work, withholding payment, referral of the matter to the Office of the Attorney General for action, or any other action that is authorized under the contract or by State or federal laws.

8. Fraud Provisions

Bidders are advised that Section 14-308 of the MBE Law provides that a person may be prosecuted for a felony for the following acts:

- a. Fraudulently obtaining, holding or attempting to obtain or hold MBE certification;
- b. Aiding another person in fraudulently obtaining, holding or attempting to obtain or hold MBE certification;
- c. Willfully obstructing, impeding, or attempting to obstruct or impede a State official or employee or employee investigating the qualifications of a business entity that has requested certification;
- d. Fraudulently obtaining, attempting to obtain, or aiding another person in fraudulently obtaining or attempting to obtain, public monies to which the person is not entitled; or
- e. In any minority business enterprise matter administered under subtitle 14:
 - (i) Willfully falsify, conceal, or cover up a material fact by any scheme or device;

- (ii) Make a false or fraudulent statement or representation; or
- (iii) Use a false writing or document that the person knows to contain a false statement or entry

Persons found guilty of violating these provisions are guilty of a felony and on conviction are subject to a fine not exceeding \$ 20,000 or imprisonment not exceeding five years, or both. Persons convicted under Section 14-308 may also be debarred from performing on State contracts by the Board of Public Works ("Board") for a period of time determined to be appropriate by the Board under the circumstances.

9. MBE Contract Support

Personnel of the Maryland Department of Transportation, its Administrations and the Authority offer contractor practicable support for MBE contract goal attainment. This assistance is available from Monday through Friday during normal business hours by calling 410-865-1269. Examples of MDOT Program assistance include:

To Majority Contractors

- Identifying subcontract items for goal attainment
- Answering questions related to MBE Program requirements

To Minority Contractors

- Answering questions related to MBE Program requirements
- Providing information on required contract records
- Referral to designated consultants for assistance for business related problems

**MINORITY
DISADVANTAGE
BUSINESS
ENTERPRISES**

MARYLAND DEPARTMENT OF TRANSPORTATION
POLICY STATEMENT – GOOD FAITH EFFORTS
April 22, 2004

MINORITY/DISADVANTAGED BUSINESS ENTERPRISES

It is the policy of the Maryland Department of Transportation (MDOT) that businesses owned by socially and economically disadvantaged person(s) shall have the maximum feasible opportunity to participate in the performance of contracts awarded by MDOT. The MDOT requires its contractors and subcontractors not to discriminate on the basis of race, color, religion, national origin, sex or disability in the award or performance of contracts. In support of this commitment, the MDOT has adopted the following Good Faith Efforts (GFE) Policy, which shall be applicable to all contracts awarded by the MDOT or its modal administrations.

In accordance with 49 CFR, Part 26, 53 and Md. Code Ann., State Fin. & Proc. Art., 14-302, the MDOT shall award a contract only to a bidder/offeror that makes GFE to meet the Minority Business Enterprise (MBE) or Disadvantaged Business Enterprise (DBE) contract goal. A determination that a bidder/offeror has made GFE shall only be made upon a determination by the MDOT that the bidder/offeror has shown that it:

- Has obtained enough MBE or DBE participation to meet the contract goal; or
- Has taken all necessary and reasonable steps to achieve the goal, which by their scope, intensity and appropriateness to the objective, could reasonably be expected to obtain sufficient MBE/DBE participation, even if they were ultimately unsuccessful.

The MDOT will make a fair and reasonable judgment whether a bidder/offeror who did not meet the goal made adequate GFEs. This policy expands the definition of GFE to allow greater flexibility to ensure DBE/MBE participation is obtained.

At a minimum, a statement of GFE submitted by the bidder/offeror shall include:

1. The name, address, and telephone number of all DBE/MBEs contacted, as well as the date of contact;
2. A description of the information provided to the contacted DBE/MBEs regarding the plans, specifications and anticipated time schedule for portions of the work to be performed;
3. As appropriate, a detailed statement of the reasons why a DBE/MBE quotation was considered unacceptable; and
4. As appropriate, a list of DBE/MBE contractors found to be unavailable. For DBE/MBE contractors that are unavailable, the bidder/offeror shall provide a Minority Contractor Unavailability Certificate Form (Form D-005) signed by an

owner or officer of the DBE/MBE. If a DBE/MBE refuses to sign the unavailability certificate, the bidder/offeror shall submit a statement indicating as such.

To aid in the determination of whether the bidder/offeror has shown GFE, the MDOT may also look at the percentage of DBE/MBE participation obtained by other bidders/offerors on the procurement.

In addition to the requirements above, the following is a list of outreach efforts that MDOT will consider as part of the bidder/offeror's GFE to obtain DBE/MBE participation. Bidders/offerors shall be encouraged to offer innovative GFE initiatives to demonstrate GFE. MDOT administrations have the flexibility to approve such innovative initiatives. The following list is illustrative only and not intended to be exhaustive.

In a GFE determination, MDOT administrations may consider any information provided by a bidder/offeror concerning the following outreach efforts:

1. The bidder/offeror's efforts to solicit through all reasonable and available means (e.g., attendance at pre-bid meetings, advertising and/or written notices) the interest of certified DBEs/MBEs that may have the capability to perform the work of the contract. The bidder/offeror should present evidence that it solicited this interest within adequate time to allow the DBEs/MBEs to respond to the solicitation. The bidder/offeror should also provide evidence that it took appropriate steps to follow up initial solicitations.
2. The bidder/offeror's selection of the work to be performed by DBEs/MBEs in order to increase the likelihood that the DBE/MBE contract goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE/MBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
3. The bidder/offeror's actions to provide interested DBEs/MBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
4. The bidder/offeror's negotiations with DBE/MBEs
 - a. Negotiating in good faith with interested DBEs/MBEs. It is the bidder/offeror's responsibility to make a portion of the work available to DBE/MBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE/MBE subcontractors and suppliers. Evidence of such negotiation shall include the names, addresses, and telephone numbers of DBEs/MBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and information as to why additional agreements could not be reached for DBEs/MBEs to perform the work.

- b. A bidder/offeror using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE/MBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs/MBEs is not in itself sufficient reason for a bidder/offeror's failure to meet the contract DBE/MBE goal, as long as such costs are reasonable. Also, the ability or desire of a bidder/offeror to perform the work of a contract with its own organization does not relieve that bidder/offeror of the responsibility to make GFE to meet the contract goal. This policy does not require a prime contractor to accept a higher quote from a DBE/MBE if the price is excessive or unreasonable.
5. The bidder/offeror must provide sound reasons for rejecting a DBE/MBE as unqualified. Any rejection of a DBE/MBE as unqualified shall be based on a thorough investigation of its capabilities. The DBE/MBE's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example, union vs. non-union employees status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
6. The bidder/offeror's efforts to assist interested DBEs/MBEs in obtaining bonding, lines of credit, or insurance as required by the owner or contract.
7. The bidder/offeror's efforts, with prior written approval of the MDOT agency, to assist interested DBEs/MBEs to obtain necessary equipment, supplies, materials, or related assistance or services.
8. The bidder/offeror's effective use of the services of available minority/women community organizations; minority/women contractors' groups; local, state and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBE/MBE.
9. The bidder/offeror's efforts to identify and assist firms that are not certified but could possibly service on a contract and satisfy DBE/MBE goals if the firm were to be certified by the MDOT.
10. Evidence of the bidder/offeror's record of meeting or exceeding DBE/MBE participation goals on prior projects.

This policy applies to all MDOT contracts that contain a DBE/MBE participation goal. All MDOT personnel are responsible for implementing and adhering to this policy.

**GOOD FAITH
EFFORTS WAIVER
CHECKLIST**

PRIME CONTRACTORS' **GOOD FAITH EFFORTS/WAIVER CHECKLIST**

Prime Contractors who put Good Faith into action will:

- ✓ Use direct solicitation, minority/women community organizations, contractors' groups, and local, state, and federal minority/women-owned business assistance offices to reach MBE's;
- ✓ Identify and assist firms that may need bonding, lines of credits, insurance, equipment, and other related issues; or assist firms that are not certified but could possibly serve on a contract and satisfy DBE/MBE goals by becoming certified;
- ✓ Identify clear sub-contractible work that will enable MBE's to compete;
- ✓ Provide the MBEs with proper information regarding the job; to include plans, specifications, and anticipated time schedule for portions of the work to be performed;
- ✓ Coordinate pre-bid meetings to inform MBEs of contracting and subcontracting opportunities;
- ✓ Advertise in general circulation, trade associations, and minority focused media concerning the subcontracting opportunities;
- ✓ Provide written notice to all certified MBEs who are certified in the work areas and have capabilities of the contract for which their participation is solicited (Contractor must allow a minimum of 10 days for the MBEs to respond to the written solicitation.); and
- ✓ Follow up on initial solicitations of interest by contacting MBEs to determine if the MBEs are interested (Contractor must detail the efforts showing names, addresses, dates, and telephone numbers of the certified MBEs contacted along with a description of information provided.)

Prime Contractors who have done the above and are submitting a waiver will:

- ✓ Document everything listed above;
- ✓ As required by regulations provide a written request for a waiver;
- ✓ Provide detailed statements of efforts to achieve the goal; to include the name, address and telephone number of all DBE/MBEs contacted, as well as the date of contact;
- ✓ Provide a list of unavailable MBEs, including a Minority Contractor Unavailability Certification Form (Form D-005) signed by an owner or officer of each unavailable DBE/MBE (If the DBE/MBE refused to sign D-005, the contractor will should submit a statement regarding this refusal.);
- ✓ If the contractor deems a DBE/MBE to be unqualified and rejects the DBE/MBE, the contractor will provide written explanation of this decision (Contractor's reasoning must be based on a thorough investigation of MBE capabilities.);
- ✓ Provide evidence that the contractor tried to negotiate in good faith with interested MBEs;
- ✓ Demonstrate that certified MBE participation was unable to be obtained at a reasonable price or that public interest is best served by a waiver;
- ✓ Demonstrate a reasonable effort to meet the overall MBE goal with other MBE classifications if the request for a waiver is for a certain MBE classification within an overall MBE goal; and
- ✓ Provide evidence from prior projects showing that the contractor has previously successfully met or exceeded assigned MBE goals.

**ADDITIONAL
INFORMATION FOR
MBE
CONTRACTORS**

ADDITIONAL INFORMATION FOR MBE SUBCONTRACTORS

MBE REPORT OF PAYMENTS RECEIVED

By the 15th of each month the MBE should submit this document to the Authority's MBE Office. It should be submitted even if there are no payments for the month.

PROMPT PAYMENT TO SUBCONTRACTORS

It is the policy of the State that a contractor shall promptly pay a subcontractor any undisputed amount that a subcontractor is entitled to under the contract for construction. This payment shall be made within ten (10) days of receiving a progress payment or final payment from the State. Undisputed amounts include the retainage on a contract.

RECORDS RETENTION

Title 21 of the State Procurement Regulations, Subtitle 06 Contract Formation and Award, Chapter 5 Plant Inspection, Audit and Retention of Records, .03 Records Retention contains the following regulation: The contractor or subcontractor shall maintain books and records that relate to the cost or pricing data for 3 years from the date of final payment under the contract, unless a longer period is otherwise specified in the contract.

FRAUD PROVISIONS

Contractors are advised that State Finance and Procurement Article 14-308 covers prohibited acts and penalties for felony and misdemeanor offenses.

STATE OF MARYLAND GOVERNOR'S OFFICE OF MINORITY AFFAIRS (GOMA)

The state's principal advocates for minority businesses, we help minority business owners who are seeking state certification and state procurement opportunities. We also help minority business owners who believe they have been treated unfairly by a state agency or other entity.

We provide referrals to agencies and other entities that have programs to assist minority business owners in getting the services they need to start, develop and grow. For more information regarding GOMA log on to www.mdminoritybusiness.com, or by calling 410-767-8232.

ENTREPRENEURIAL DEVELOPMENT INSTITUTE (EDI)

EDI helps meet the education needs of small and minority businesses in construction and related business fields. The Maryland State Highway Administration's Equal Opportunity Office provides the services of the EDI. Centered at the University of Maryland Eastern Shore (UMES), EDI classes are held on weekends. A nominal fee of \$50.00 is charged for the classes and hotel accommodations. For schedule and registration information, contact the EDI Coordinator at (410) 651-6476.

MSBDFA BONDING AND CONTRACT FINANCING PROGRAM

The Maryland Small Business Development Financing Authority (MSBDFA) offers program through four programs: Contract Financing, Long Term Guaranty Program, Surety Bond Guaranty Program and Equity Participation Investment Program. They provide contract financing and surety bonding assistance to eligible firms to begin, continue and complete work on MDOT contracts. Firms bidding on MDOT contracts needing a bid, performance or payment bond or working capital can contact the office at (410) 333-4270.

PROFESSIONAL ASSISTANCE

An MBE firm certified by MDOT may request referral assistance in any area of business by calling the MBE Information Line, 1-800-544-6056 in the Office of Minority Business Enterprise.

THE STATE OF MARYLAND SMALL BUSINESS RESERVE PROGRAM

The State of Maryland Small Business Reserve Program is committed to the growth and success of small businesses. For the first time, small businesses will be able to bid for State contracts without competing with larger, more established companies.

Beginning October 1, 2004, designated agencies will be required to award a minimum of 10 percent of their units' total dollar value of goods, supplies, services, maintenance, construction, construction related, architectural service and engineering service contracts to small businesses. For more information regarding the Small Business Reserve Program log on to www.smallbusinessreserve.maryland.gov , or by calling 410-767-4270.

**MBE COMPLIANCE
CONTRACTOR
NOTIFICATION**

MBE COMPLIANCE CONTRACTOR NOTIFICATION

On MdTA Contracts, the prime/general contractor must notify the MBE compliance office of any changes to the approved MBE submittal package. This includes increasing the target MBE goal as well as decreasing the target goal. The notification must be in writing and include at a minimum the following information:

- A. Decrease of the target goal
 - a. MdTA contract number
 - b. Prime/General Contractor
 - c. MBE Contractor/Contractors affected
 - d. Contract Item Numbers
 - e. Actual dollar value of items
 - f. Percentage of decrease to target goal
 - g. Reason for decrease
 - h. List of other certified MBE Contractors who are contacted as replacements to attain target goal. This should include copies of correspondence from the prime/general contractor requesting quotes for the work and response from the MBE contacted.

- B. Increase of the target goal
 - a. MdTA contract number
 - b. Prime/General Contractor
 - c. MBE Contractor Name & Address
 - d. Contract Item Number
 - e. Actual dollar of value items
 - f. Percentage of increase above target goal

Correspondence concerning the above will be sent directly to:

Mrs. Meshelle M.V. Howard
Maryland Transportation Authority
Chief, MBE Program
2310 Broening Highway
Suite 150
Baltimore, MD 21224

The Office of Construction will receive a copy of the correspondence at the following address:

Mr. David Ferrara
Maryland Transportation Authority
Director of Construction
304 Authority Drive
Baltimore, MD 21222

**ALL OTHER QUESTIONS CONCERNING MBE COMPLIANCE CAN BE DIRECTED
TO THE FOLLOWING COMPLIANCE TEAM:**

Valencia Hainesworth
Compliance Supervisor
410-537-5661

Karen Karris
Compliance Officer
410-537-5660

Orlando Price
Compliance Officer
410-537-1052

POINTS OF CONTACT
Maryland Transportation Authority

All Shop Drawings:

Mr. Abey Tamrat
Maryland Transportation Authority
300 Authority Drive
Baltimore, MD 21222
atamrat@mdta.state.md.us

Phone: (410) 537-7822
Fax: (410) 537-7801

All Other Correspondence:

Mr. David Ferrara
Director of Construction
Maryland Transportation Authority
Engineering Division
304 Authority Drive
Baltimore, Maryland 21222
dferrara@mdta.state.md.us

Phone: (410) 537-7882
Fax: (410) 537-7802

Certified Payrolls:

Two (2) complete copies of certified payrolls are to be delivered to the MdTA Project Inspector at the field office for all contractors employed on the project. One (1) complete copy is to be sent to the Commissioner of Labor & Industry. **No certified payrolls are to be mailed or delivered to the FSK Bridge.**

Documents Required Before Commencing Work

- Three (3) emergency phone numbers.
- All subcontractors must be approved by the Engineering Division. Contractor must provide name of subcontractor, address, dollar value of subcontract, item number and description of work.
- MBE subcontractors must be approved by the Chief, Equal Opportunity, and by the Engineering Division.
- All certificates of insurance for the minimum amounts as required by the Special Provisions.
- Submit payment breakdown for all lump sum items.
- Progress Schedule.
- MOT Plans.
- Catalog Cuts for all M.O.T. devices both permanent and temporary.